

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1612, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

1 Page 2, line 20, after "offer." insert **"Payment accepted by a**
2 **creditor, servicer, or creditor's agent in connection with a short**
3 **sale constitutes payment in full satisfaction of the first lien**
4 **mortgage transaction unless the creditor, servicer, or creditor's**
5 **agent obtains:**

6 **(a) the following statement: "The debtor remains liable for**
7 **any amount still owed under the first lien mortgage**
8 **transaction."; or**

9 **(b) a statement substantially similar to the statement set forth**
10 **in subdivision (a);**

11 **acknowledged by the initials or signature of the debtor, on or**
12 **before the date on which the short sale payment is accepted.".**

13 Page 2, delete lines 21 through 32.

14 Page 2, delete lines 40 through 42, begin a new paragraph and
15 insert:

16 **"SECTION 2. IC 24-4.4-2-404.1 IS ADDED TO THE INDIANA**
17 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
18 **[EFFECTIVE JULY 1, 2009]: Sec. 404.1. (1) If the director**
19 **determines that a director, an officer, or an employee of a creditor:**

20 **(a) has committed a violation of a statute, a rule, a final cease**
21 **and desist order, any condition imposed in writing by the**

1 director in connection with the granting of any application or
2 other request by the creditor, or any written agreement
3 between the creditor and the director;

4 (b) has committed fraudulent or unconscionable conduct; or
5 (c) has been convicted of or has pleaded guilty or nolo
6 contendere to a felony under the laws of Indiana or any other
7 jurisdiction;

8 the director, subject to subsection (2), may issue and serve upon the
9 officer, director, or employee a notice of the director's intent to
10 issue an order removing the person from the person's office or
11 employment, an order prohibiting any participation by the person
12 in the conduct of the affairs of any creditor, or an order both
13 removing the person and prohibiting the person's participation.

14 (2) A violation, practice, or breach specified in subsection (1) is
15 subject to the authority of the director under subsection (1) if the
16 director finds any of the following:

17 (a) The interests of the creditor's customers could be seriously
18 prejudiced by reason of the violation or practice.

19 (b) The violation, practice, or breach involves personal
20 dishonesty on the part of the officer, director, or employee
21 involved.

22 (c) The violation, practice, or breach demonstrates a willful or
23 continuing disregard by the officer, director, or employee for
24 state and federal laws and regulations, and for the consumer
25 protections contained in this article.

26 (3) A person who:

27 (a) has been convicted of; or

28 (b) has pleaded guilty or nolo contendere to;

29 a felony under the laws of Indiana or any other jurisdiction may
30 not serve as an officer, a director, or an employee of a creditor, or
31 serve in any similar capacity, unless the person obtains the written
32 consent of the director.

33 (4) A creditor that willfully permits a person to serve the
34 creditor in violation of subsection (3) is subject to a civil penalty of
35 five hundred dollars (\$500) for each day the violation continues.

36 SECTION 3. IC 24-4.4-2-404.2 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2009]: **Sec. 404.2. (1) A notice issued under**

- 1 **this chapter must:**
- 2 **(a) be in writing;**
- 3 **(b) contain a statement of the facts constituting the alleged**
- 4 **practice, violation, or breach;**
- 5 **(c) state the facts alleged in support of the violation, practice,**
- 6 **or breach;**
- 7 **(d) state the director's intention to enter an order under**
- 8 **section 404.1(1) of this chapter;**
- 9 **(e) be delivered to the board of directors of the creditor;**
- 10 **(f) be delivered to the officer, director, or employee**
- 11 **concerned; and**
- 12 **(g) specify the procedures that must be followed to initiate a**
- 13 **hearing to contest the facts alleged.**

14 **(2) If a hearing is requested not later than ten (10) days after**

15 **service of the written notice, the director or designee of the**

16 **director shall hold a hearing concerning the alleged practice,**

17 **violation, or breach. The hearing shall be held not later than**

18 **forty-five (45) days after receipt of the request. The director or**

19 **designee of the director, based on the evidence presented at the**

20 **hearing, shall enter a final order under section 404.4 of this**

21 **chapter.**

22 **(3) If no hearing is requested within the time specified in**

23 **subsection (2), the director may proceed to issue a final order**

24 **described in subsection (2) on the basis of the facts set forth in the**

25 **written notice.**

26 **(4) An officer, director, or employee who is removed from a**

27 **position under a removal order that has become final may not**

28 **participate in the conduct of the affairs of any licensee under this**

29 **article without the approval of the director.**

30 **(5) The director may, for the protection of the creditor or the**

31 **interests of its customers, suspend from office or prohibit from**

32 **participation in the affairs of the creditor an officer, a director, or**

33 **an employee of a creditor who is the subject of a written notice**

34 **served by the director under subsection (1). A suspension or**

35 **prohibition under this subsection becomes effective upon service of**

36 **the notice. Unless stayed by a court in a proceeding authorized by**

37 **subsection (6), the notice remains in effect pending completion of**

38 **the proceeding under the written notice served under subsection**

(1) and until the effective date of an order entered by the director under subsection (2) or (3). Copies of the notice shall also be served upon the creditor or affiliate of which the person is an officer, a director, or an employee.

(6) Not more than fifteen (15) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the creditor or affiliate under subsection (5), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings under subsection (2), and the court may stay the suspension or prohibition.

(7) The department shall maintain an official record of a proceeding under this chapter.

SECTION 4. IC 24-4.4-2-404.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the creditor, director, or officer under section 404.1 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.**

SECTION 5. IC 24-4.4-2-404.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.4. (1) If the director finds that the conditions specified in section 404.1 of this chapter have been established, the director may issue a final order.**

(2) A final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) In exercising the director's enforcement powers under this chapter against an officer, director, or employee, the director may:

- (a) remove the officer, director, or employee from the person's office, position, or employment;**
- (b) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any creditor; or**
- (c) take both of the actions set forth in subdivisions (a) and**

1 **(b).**

2 **(4) A final order shall be issued in writing not later than ninety**
 3 **(90) days after conclusion of the hearing, unless this period is**
 4 **waived or extended with the written consent of all parties or for**
 5 **good cause shown.**

6 **(5) If the officer, director, or employee does not appear**
 7 **individually or by an authorized representative at the hearing, the**
 8 **officer, director, or employee is considered to have consented to the**
 9 **issuance of a final order.**

10 **(6) The remedies provided in this chapter are in addition to**
 11 **other remedies contained in this article.**

12 SECTION 6. IC 24-4.4-2-404.5 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JULY 1, 2009]: **Sec. 404.5. (1) A final order issued**
 15 **under this chapter is effective at the expiration of ten (10) days**
 16 **after service of the order. However, a final order issued upon**
 17 **consent under section 404.3 of this chapter is effective at the time**
 18 **specified in the order.**

19 **(2) A final order remains effective and enforceable as provided**
 20 **in the order.**

21 **(3) The department or a reviewing court may stay, modify, or**
 22 **vacate a final order.**

23 SECTION 7. IC 24-4.4-2-404.6 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2009]: **Sec. 404.6. (1) A civil penalty imposed**
 26 **on a director or an officer in a final order issued under section**
 27 **404.4 of this chapter may not exceed fifteen thousand dollars**
 28 **(\$15,000) for each practice, violation, or act found to exist in the**
 29 **final order.**

30 **(2) In determining the amount of a civil penalty assessed in a**
 31 **final order issued under section 404.4 of this chapter, the following**
 32 **factors shall be considered:**

33 **(a) The appropriateness of the civil penalty with respect to the**
 34 **financial resources and good faith of the individual charged.**

35 **(b) The gravity of the practice, violation, or act.**

36 **(c) The history of previous practices, violations, or acts.**

37 **(d) The economic benefit derived by the individual from the**
 38 **practice, violation, or act.**

1 (e) Other factors that justice requires.

2 (3) A creditor may not indemnify a director or an officer for a
3 civil penalty imposed in a final order under section 404.4 of this
4 chapter.

5 (4) Civil penalties shall be deposited in the financial institutions
6 fund established by IC 28-11-2-9.

7 SECTION 8. IC 24-4.4-2-404.7 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2009]: **Sec. 404.7. The department may**
10 **enforce any of the following by applying for appropriate relief to**
11 **a court having jurisdiction:**

12 (a) An order issued under this chapter.

13 (b) A written agreement entered into by the department and
14 any director, officer, or employee of a creditor.

15 (c) Any condition imposed in writing by the department on
16 any director, officer, or employee of a creditor.".

17 Page 3, delete lines 1 through 9.

18 Page 7, line 2, delete "If the written offer by or on behalf of the" and
19 insert **"Payment accepted by a creditor, servicer, or creditor's agent**
20 **in connection with a short sale constitutes payment in full**
21 **satisfaction of the mortgage transaction unless the creditor,**
22 **servicer, or creditor's agent obtains:**

23 (a) the following statement: **"The debtor remains liable for**
24 **any amount still owed under the mortgage transaction.";** or

25 (b) a statement substantially similar to the statement set forth
26 in subdivision (a);

27 **acknowledged by the initials or signature of the debtor, on or**
28 **before the date on which the short sale payment is accepted.".**

29 Page 7, delete lines 3 through 12.

30 Page 9, line 16, delete "If the written offer by or on behalf of the"
31 and insert **"Payment accepted by a creditor, servicer, or creditor's**
32 **agent in connection with a short sale constitutes payment in full**
33 **satisfaction of the mortgage transaction unless the creditor,**
34 **servicer, or creditor's agent obtains:**

35 (a) the following statement: **"The debtor remains liable for**
36 **any amount still owed under the mortgage transaction.";** or

37 (b) a statement substantially similar to the statement set forth
38 in subdivision (a);

1 **acknowledged by the initials or signature of the debtor, on or**
 2 **before the date on which the short sale payment is accepted."**

3 Page 9, delete lines 17 through 26.

4 Page 11, delete lines 5 through 16, begin a new paragraph and
 5 insert:

6 "SECTION 16. IC 24-4.5-6-119 IS ADDED TO THE INDIANA
 7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2009]: **Sec. 119. (a) Subject to subsection (b),**
 9 **if the director determines that a director, an officer, or an**
 10 **employee of a creditor:**

11 (1) **has committed a violation of a statute, a rule, a final cease**
 12 **and desist order, a condition imposed in writing by the**
 13 **director in connection with the grant of an application or**
 14 **other request by the creditor, or a written agreement between**
 15 **the creditor and the director;**

16 (2) **has committed fraudulent or unconscionable conduct; or**

17 (3) **has been convicted of or has pleaded guilty or nolo**
 18 **contendere to a felony under the laws of Indiana or any other**
 19 **jurisdiction;**

20 **the director may issue and serve upon the person a notice of**
 21 **charges and of the director's intent to issue an order removing the**
 22 **person from the person's office or employment, an order**
 23 **prohibiting participation by the person in the conduct of the affairs**
 24 **of any creditor, or an order both removing the person and**
 25 **prohibiting the person's participation.**

26 (b) **A violation, practice, or breach described in subsection (a)**
 27 **is subject to the authority of the director under subsection (a) if the**
 28 **director finds any of the following:**

29 (1) **The interests of the creditor's customers could be seriously**
 30 **prejudiced by reason of the violation, practice, or breach.**

31 (2) **The violation, practice, or breach involves personal**
 32 **dishonesty on the part of the officer, director, or employee**
 33 **involved.**

34 (3) **The violation, practice, or breach demonstrates a willful**
 35 **or continuing disregard by the officer, director, or employee**
 36 **for state or federal law and regulations, and for the consumer**
 37 **protections contained in this article.**

38 (c) **A person who:**

1 (1) has been convicted of; or
 2 (2) has pleaded guilty or nolo contendere to;
 3 a felony under the laws of Indiana or any other jurisdiction may
 4 not serve as an officer, a director, or an employee of a creditor, or
 5 serve in any similar capacity, unless the person obtains the written
 6 consent of the director.

7 (d) A creditor that willfully permits a person to serve the
 8 creditor in violation of subsection (c) is subject to a civil penalty of
 9 five hundred dollars (\$500) for each day the violation occurs.

10 SECTION 17. IC 24-4.5-6-120 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2009]: **Sec. 120. (a) A notice issued under**
 13 **section 119 of this chapter must:**

14 (1) be in writing;

15 (2) contain a statement of:

16 (A) the facts constituting the alleged violation, practice, or
 17 breach;

18 (B) the facts alleged in support of the violation, practice, or
 19 breach; and

20 (C) the director's intention to issue an order under section
 21 119(a) of this chapter;

22 (3) be delivered to the board of directors of the creditor;

23 (4) be delivered to the officer, director, or employee to which
 24 the notice applies;

25 (5) specify the procedures that must be followed to initiate a
 26 hearing to contest the alleged violation, practice, or breach;
 27 and

28 (6) if the director suspends or prohibits the officer, director,
 29 or employee from participation in the affairs of the creditor
 30 as described under subsection (e), a statement of the
 31 suspension or prohibition.

32 (b) If a hearing is requested not later than ten (10) days after
 33 service of the notice described under subsection (a), the director or
 34 designee of the director shall hold a hearing concerning the alleged
 35 violation, practice, or breach. The hearing shall be held not later
 36 than forty-five (45) days after receipt of the request. The director
 37 or designee of the director, based on the evidence presented at the
 38 hearing, shall enter a final order in accordance with section 122 of

1 this chapter.

2 (c) If no hearing is requested within the period of time specified
3 in subsection (b), the director may proceed to issue a final order
4 under section 122 of this chapter on the basis of the facts set forth
5 in the notice described under subsection (a).

6 (d) An officer, director, or employee of a creditor who is
7 removed from a position under a removal order under section 122
8 of this chapter that has become final may not, without the approval
9 of the director, participate in the conduct of the affairs of a licensee
10 described under IC 24-4.5-3.

11 (e) The director may, for the protection of the creditor or the
12 interests of the creditor's customers, suspend from office or
13 prohibit from participation in the affairs of the creditor an officer,
14 a director, or an employee of a creditor who is the subject of a
15 written notice served by the director under subsection (a). A
16 suspension or prohibition under this subsection becomes effective
17 upon service of the notice. Unless stayed by a court in a proceeding
18 authorized by subsection (f), the notice shall remain in effect
19 pending completion of a proceeding under subsection (b) and until
20 the effective date of an order entered by the director under
21 subsection (b) or (c). If the director suspends or prohibits
22 participation of an officer, a director, or an employee under this
23 subsection, copies of the notice shall also be served upon the
24 creditor or affiliate of which the person is an officer, a director, or
25 an employee.

26 (f) Not more than fifteen (15) days after an officer, a director, or
27 an employee has been suspended from office or prohibited from
28 participation in the conduct of the affairs of the creditor or affiliate
29 under subsection (e), the officer, director, or employee may apply
30 to a court having jurisdiction for a stay of the suspension or
31 prohibition pending completion of the proceedings under
32 subsection (b). The court may stay a suspension or prohibition of
33 the officer, director, or employee.

34 (g) The department shall maintain an official record of a
35 proceeding under this chapter.

36 SECTION 18. IC 24-4.5-6-121 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2009]: **Sec. 121. If the director enters into a**

1 consent to a final order with a director, an officer, or an employee,
2 the director is not required to issue and serve a notice of charges
3 upon the director, officer, or employee under section 119 of this
4 chapter. A consent agreement may be negotiated and entered into
5 before or after the issuance of a notice of charges. The director
6 shall provide a copy of the consent order to the board of directors
7 of the creditor.

8 SECTION 19. IC 24-4.5-6-122 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2009]: Sec. 122. (a) Subject to section 120 of
11 this chapter, if the director determines that a director, an officer,
12 or an employee of a creditor has committed an act described in
13 section 119 of this chapter, the director may issue a final order.

14 (b) A final order must include separately stated findings of fact
15 and conclusions of law for all aspects of the order.

16 (c) In exercising the director's enforcement powers under this
17 chapter against an officer, a director, or an employee, the director
18 may:

19 (1) remove the officer, director, or employee from the
20 officer's, director's, or employee's office, position, or
21 employment;

22 (2) prohibit any participation by the officer, director, or
23 employee in the conduct of the affairs of any creditor; or

24 (3) take both of the actions set forth in subdivisions (1) and
25 (2).

26 (d) A final order shall be issued in writing not later than ninety
27 (90) days after conclusion of a hearing, unless this period is waived
28 or extended with the written consent of all parties or for good
29 cause shown.

30 (e) If the officer, director, or employee does not appear
31 individually or by a duly authorized representative at the hearing,
32 the officer, director, or employee is considered to have consented
33 to the issuance of a final order.

34 (f) The director may keep a final order confidential if the
35 director determines that the immediate release of the order would
36 endanger the stability of the creditor. However, after two (2) years
37 following the date that an order is issued, a final order is no longer
38 confidential.

1 (g) The remedies provided in this chapter are in addition to
2 other remedies contained in this article.

3 SECTION 20. IC 24-4.5-6-123 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2009]: **Sec. 123. (a) A final order issued**
6 **under section 122 of this chapter is effective the eleventh day after**
7 **the date the order is served on the creditor and the officer,**
8 **director, or employee. However, a final order issued upon consent**
9 **under section 121 of this chapter is effective at the time specified**
10 **in the order.**

11 (b) A final order remains effective and enforceable as provided
12 in the order.

13 (c) The department or a reviewing court may stay, modify, or
14 vacate a final order.

15 SECTION 21. IC 24-4.5-6-124 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2009]: **Sec. 124. (a) The director may impose**
18 **a civil penalty under a final order issued under section 122 of this**
19 **chapter. A civil penalty imposed on a director or an officer may not**
20 **exceed fifteen thousand dollars (\$15,000) for each practice,**
21 **violation, or breach found to have been committed.**

22 (b) The director shall consider the following factors in
23 determining the amount of a civil penalty that should be assessed
24 against a director, an officer, or an employee:

25 (1) The appropriateness of the civil penalty with respect to the
26 financial resources and good faith of the individual charged.

27 (2) The gravity of the practice, violation, or breach.

28 (3) The history of previous practices, violations, or breaches.

29 (4) The economic benefit derived by the individual from the
30 practice, violation, or breach.

31 (5) Other factors that justice requires.

32 (c) A creditor may not indemnify a director, an officer, or an
33 employee for a civil penalty imposed against the director or officer
34 under this section.

35 (d) Civil penalties shall be deposited in the financial institutions
36 fund established by IC 28-11-2-9.

37 SECTION 22. IC 24-4.5-6-125 IS ADDED TO THE INDIANA
38 CODE AS A NEW SECTION TO READ AS FOLLOWS

- 1 [EFFECTIVE JULY 1, 2009]: **Sec. 125. The department may enforce**
 - 2 **any of the following by applying for appropriate relief to a court**
 - 3 **having jurisdiction:**
 - 4 (1) **An order issued under section 121 or 122 of this chapter.**
 - 5 (2) **A written agreement entered into by the department and**
 - 6 **a director, an officer, or an employee of the creditor.**
 - 7 (3) **Any condition imposed in writing by the department on a**
 - 8 **director, an officer, or an employee of the creditor."**
 - 9 Page 96, line 26, delete "not".
 - 10 Page 104, delete lines 6 through 42.
 - 11 Page 105, delete lines 1 through 8.
 - 12 Page 105, line 12, delete "five (5)" and insert "**four (4)**".
 - 13 Page 105, line 25, delete "five (5)" and insert "**four (4)**".
 - 14 Page 105, delete lines 37 through 42.
 - 15 Page 109, line 19, delete "FOLLOW" and insert "FOLLOWING".
 - 16 Page 109, delete lines 23 through 31.
 - 17 Renumber all SECTIONS consecutively.
- (Reference is to HB 1612 as printed February 18, 2009.)

and when so amended that said bill do pass.

Committee Vote: Yeas 8, Nays 0.

Paul

Chairperson